

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FILED/ACCEPTED
JUL 17 2007
 Federal Communications Commission
 Office of the Secretary

In the Matter of)

Arkansas Cable Telecommunications)
 Association, et al.)

Complainants,)

v.)

Entergy Arkansas, Inc.)

Respondent.)

EB Docket No 06-53

EB-05-MD-004

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Federal Communications Commission
 Bureau / Office



UTILITY SUPPORT SYSTEMS, INC.'S SPECIAL APPEARANCE AND
MOTION TO STRIKE
COMPLAINANTS' MOTION TO COMPEL

Utility Support Systems, Inc. ("USS"),¹ by its attorneys, files its special appearance and requests that the Administrative Law Judge strike the Motion to Compel Utility Support System Inc.'s Compliance with Subpoena Duces Tecum ("Motion to Compel") filed by Complainants Arkansas Cable Telecommunications Association, et al., ("ACTA") on July 9, 2007, because the Motion to Compel is impermissible under the Communications Act of 1934, as amended, and the Commission's Rules.

ARGUMENT

ACTA's Motion to Compel states that it is brought pursuant to 47 C.F.R. § 1.340. *See* Motion to Compel at 1 ("Pursuant to Section 1.340 of the Commission's rules..."). Section

¹ USS is not a party to the above-referenced action.

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1.340 states, however, that compliance with a subpoena may be obtained through "any court of the United States," not through any part of the Commission:

Sec. 1.340 Attendance of witness; disobedience.

The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at any designated place of hearing. In case of disobedience to a subpoena (sic), the Commission or any party to a proceeding before the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Although the Commission and its administrative law judges may issue subpoenas, they do not possess the authority to enforce those subpoenas. *See* 47 U.S.C. § 409(f) ("And in case of disobedience to a subpoena (sic) the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.").² Rather, and as 47 U.S.C. § 409 and 47 C.F.R. § 1.340 make clear, such requests for enforcement must be brought before an appropriate federal court.

For example, in *In the matter of Commercial Realty St. Pete, Inc. Application for Licenses in the Interactive Video and Data Services*, 10 FCC Rcd 4277 (1995), the Commission subpoenaed testimony and documentation from Commercial Realty and two individuals, only to have: "all three parties refuse[] to testify and to provide the Commission the information requested." *Id.*, ¶ 5. Thus, the Commission was required to seek enforcement from a federal court: "The U.S. District Court for the District of Columbia subsequently granted the

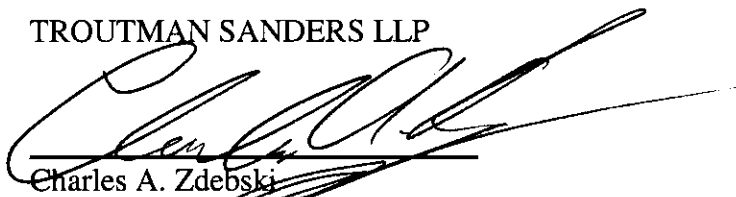
² This enforcement scheme is similar to that involving other federal agencies. *See, e.g.*, 7 U.S.C. § 136(d) (related to environmental regulation): "Upon a showing of relevance and reasonable scope of evidence sought by any party to a public hearing, the Hearing Examiner shall issue a subpoena (sic) to compel testimony or production of documents from any person. The Hearing Examiner shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of the witness or the content of documents produced and shall order the payment of reasonable fees and expenses as a condition to requiring testimony of the witness. On contest, the subpoena (sic) may be enforced by an appropriate United States district court in accordance with the principles stated herein."

government's petition to enforce the subpoenas against the parties." *Id.* See also *FCC v. Schreiber*, 201 F.Supp. 421 (D.C. 1962) (court finding jurisdiction over Commission enforcement of subpoena); *FCC v. Cohn*, 154 F.Supp. 899 (S.D.N.Y. 1959) ("This is a proceeding brought by the Federal Communications Commission to enforce administrative subpoenas duces tecum..."); *In Re Application of Dorothy O. Schulze and Deborah Brigham*, 5 FCC Rcd 7381, n. 2 (1990) ("We recognize that in view of recent events, there is a risk that some individuals may not cooperate in these further proceedings. Appropriate remedies, however, are available. See, for example, 47 C.F.R. § 1.340 (use of courts to enforce a subpoena).") (parenthetical in original, emphasis supplied).

ACTA's Motion to Compel is not properly before the Commission. Accordingly, it should be struck. In the event that ACTA's Motion to Compel will be entertained by the Commission, USS requests ten days from the time of the order denying its Motion to Strike to file its opposition or to seek other appropriate relief. Counsel for USS sought consent from counsel for ACTA for this ten day time period, which consent was refused.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of July, 2007 served a copy of the foregoing upon the persons listed below by hand delivery*, e-mail**, and/or first class mail***.

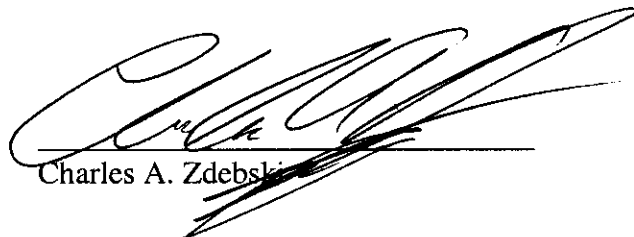
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